

1 MR. HAVENS: My companies are in
2 the bankruptcy, sir. May I say one thing?

3 JUDGE SIPPEL: They are?

4 MR. HAVENS: Yes, they are.
5 They're parties in the bankruptcy. Can I
6 address a few things briefly?

7 JUDGE SIPPEL: Well, go ahead.

8 MR. HAVENS: Thank you.

9 The special entities are parties
10 in the bankruptcy. We have attorneys in the
11 bankruptcy. They have always been there.
12 They have reviewed the plan of reorganization,
13 the disclosure plan. We will be making
14 serious objections to both of them. We have
15 an alterative we will be offering to all of
16 the parties, including Maritime, in the
17 bankruptcy. We have comments that I could
18 make or I would have been happy to have our
19 attorneys make on all the arguments, which are
20 arguments, that Mr. Keller is making today.

21 I thought some minutes ago it was
22 decided to move on to the issue G, which is

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1 certainly the finite purpose that Maritime
2 called this hearing, but --

3 JUDGE SIPPEL: Maritime didn't
4 call any hearing. I called the hearing. It's
5 not a hearing. It's a conference. And I can
6 cover anything that I think is pertinent to
7 getting the ball down the road a little bit or
8 do they kick the can now or what do they do?

9 MR. HAVENS: Yes, sir. I respect
10 that. I'm sorry. I probably misspoke.

11 JUDGE SIPPEL: Well, you have.
12 And you are wasting time. You can't even come
13 to Washington because you're so busy. And now
14 we're just wasting a bunch of time.

15 MR. HAVENS: I respectfully have
16 stated that my parties are part of the
17 bankruptcy. And we have rights in the
18 bankruptcy. And I stated some facts which I
19 think are relevant.

20 JUDGE SIPPEL: Yes, but then you
21 went into some other -- you know, you drifted
22 off of that.

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1 Look, I am very much interested in
2 what is going on at the bankruptcy. And if
3 your attorneys down here are going to involve
4 themselves in the hearing on June 13th and
5 there are going to be counter-proposals
6 offered and you have got a justiciable
7 interest that the bankruptcy court has to
8 listen to, of course, I am very interested in
9 that.

10 But I don't know why you don't
11 have a lawyer. I don't know why you don't
12 have a lawyer up here in the courtroom today
13 talking about this business, instead of you
14 doing it on speakerphone when you've got 18
15 other things to do down there, out there,
16 wherever you are, California. That's a long
17 way off.

18 MR. HAVENS: Because the report on
19 bankruptcy status wouldn't have gotten into
20 this.

21 In addition, on the issue of
22 valuation, there are valuations in the

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1 bankruptcy. Those were under protective
2 order. If the Enforcement Bureau or Your
3 Honor or other parties would like to see those
4 valuations submitted by experts we paid for on
5 the Maritime licenses, then we could make an
6 appropriate arrangement.

7 JUDGE SIPPEL: Do you know
8 anything about that?

9 MS. KANE: We have not heard
10 anything about that. And I thought we were
11 entitled to all of the information that was
12 being filed in the bankruptcy court because
13 their protective order is the same as ours.

14 JUDGE SIPPEL: Do you know
15 something about this, Mr. Keller?

16 MR. KELLER: I'm not sure.

17 JUDGE SIPPEL: The gentleman, Mr.

18 --

19 MR. KELLER: Mr. Reardon knows
20 something about this. And I stated this.
21 This is not testimony, but he has some
22 information about the bankruptcy proceeding,

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1 both in his capacity as manager and also as
2 having testified in the hearings and being
3 involved in the hearings that are coming up.

4 JUDGE SIPPEL: This is status
5 information. I know you have a continuing
6 objection to this.

7 MS. KANE: We do have a continuing
8 objection to having Mr. Reardon --

9 JUDGE SIPPEL: He's not
10 testifying.

11 MS. KANE: We understand that he
12 is providing information. We have not gotten
13 complete discovery or the opportunity to be
14 able to depose him on any of these issues. So
15 we just have --

16 JUDGE SIPPEL: You will have the
17 opportunity to depose him.

18 MS. KANE: We hope to, Your Honor,
19 if we could ever get complete discovery from
20 Maritime.

21 JUDGE SIPPEL: Consider this part
22 of your discovery. I know you've got to get

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1 more, but I'm saying that this is exactly
2 right. Anything that he says that's
3 inconsistent with what he says in a deposition
4 is not in his interest. So, you know, I don't
5 see Reardon as --

6 MS. KANE: We understand that,
7 Your Honor. We just want to note our
8 objection for the record that --

9 JUDGE SIPPEL: All right.

10 MS. KANE: -- it is inappropriate
11 for him to provide any sort of --

12 JUDGE SIPPEL: Okay. Okay. I've
13 got the objection. You're not under oath.
14 You're simply talking about what is going on
15 down there. Where is it being done?
16 Mississippi or somewhere?

17 MR. REARDON: It's in Aberdeen,
18 Mississippi, Your Honor, in the northern
19 district of Mississippi, in federal court
20 there.

21 JUDGE SIPPEL: Okay.

22 MR. REARDON: I testified on two

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1 occasions. It's a matter of public record.
2 There is a transcript available on both
3 occasions. I testified about the value of the
4 licenses involved in the transactions in the
5 asset purchase agreements, which were brought
6 before Judge Houston in the bankruptcy court
7 for his approval.

8 There are two occasions: in
9 December and in January. I testified, of
10 course, under oath. And the judge does care
11 a lot about valuation. I was on the stand for
12 a number of hours discussing valuation.

13 At the hearing in January, Mr.
14 Havens also testified personally about
15 valuation. The judge listened to the
16 testimony on both occasions. And in a number
17 of instances, the court granted the assumption
18 of these asset purchase agreements that are
19 involved in, for example --

20 JUDGE SIPPEL: When you say he
21 granted the assumption, what do you --

22 MR. REARDON: By the debtor, by

1 MCLM, the debt by the bankruptcy estate. In
2 other words, we filed for approval of the
3 asset purchase agreements in bankruptcy that
4 were pending. And all of these different
5 entities that were involved in this case with
6 the exception of Wisconsin Power and Light,
7 Interstate Power and Light, and DCP Midstream
8 have all asked to have the court approve the
9 assumption of their contracts.

10 So in order to do that, I
11 testified at the bankruptcy court that these
12 were fair value contracts. And the court
13 agreed in every situation except I believe
14 Encana Oil and Gas and in Duquesne, where the
15 judge asked for more information. And that
16 was in response to Mr. Havens' testimony on
17 the same subject.

18 MR. HAVENS: Mr. Reardon --

19 MR. REARDON: This is all public
20 matter. This is all public record, Your
21 Honor. But my point is that the court does
22 care about valuation.

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1 But we have not had a hearing
2 since the reorganization plan was filed April
3 30th. That hearing will come up the middle of
4 June, on the 13th. I will be there in person
5 also to testify about valuation.

6 MR. HAVENS: I would like to
7 correct Mr. Reardon. There are no transcripts
8 yet. My companies are doing everything we can
9 to pay to get the transcripts.

10 And as far as the valuations, what
11 I stated is that we hired an independent
12 expert to do evaluations of the Maritime
13 system response to Mr. Reardon's own testimony
14 for his company without an expert. And what
15 I stated is those are available.

16 The Commission is a party in the
17 bankruptcy. But, in any case, I have always
18 said in this hearing before Your Honor that
19 anything my companies can do to provide useful
20 information, as Ms. Kane knows, we are quite
21 active in attempting to do that.

22 So in terms of this valuation to

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1 the degree any party in the hearing or Your
2 Honor would like information from the
3 transcripts once we get that or the valuation
4 that we paid an independent expert to come up
5 with, we would be happy to provide that.

6 And, again, the FCC is a party in
7 the bankruptcy.

8 JUDGE SIPPEL: Well, I'll let Ms.
9 Kane decide, make the decision on that,
10 whether or not they are going to go after
11 information from you, but I appreciate you
12 bringing it up. And that's it.

13 Thank you, Mr. Reardon.

14 MR. REARDON: Thank you, Your
15 Honor.

16 JUDGE SIPPEL: That helps bring us
17 up to speed. It tells me, though, that there
18 is really nothing to decide on. Well, I am
19 not talking about making a "decision," but
20 there is nothing really to resolve this
21 question of bankruptcy or to put any kind of
22 a lid on it until after the hearing.

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1 We need some kind of a final order
2 from the bankruptcy court. Otherwise we're
3 not going to understand what is going on.
4 Nobody has been able to give me an explanation
5 of what is going on, really. I mean, Mr.
6 Reardon told me what he testified to, and I
7 believe that. And I believe everything, but
8 -- anyway, that's got nothing to do with
9 anything else about the -- what about these
10 stipulations?

11 MR. KELLER: Well, Your Honor,
12 part of the issue here is the Bureau has been
13 complaining that we haven't complied with
14 discovery.

15 As I understand it, as far as the
16 Bureau's outstanding motions and all of that,
17 they are really only concerned with -- or they
18 are only raising issues as to four of the
19 interrogatories.

20 In the order that you put out
21 about this hearing, you made two statements --

22 JUDGE SIPPEL: It's a conference.

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1 Don't be calling it a hearing.

2 MR. KELLER: This conference.
3 There are two statements that sort of
4 concerned me. I remember you said something
5 about you are entitled to know, at a minimum,
6 whether the facilities are constructed and
7 whether they are still in operation. And we
8 don't have either. I take strong issue with
9 that.

10 Maritime has provided unequivocal
11 answers stating that each of the facilities
12 was timely constructed. We where we have the
13 specific information available have provided
14 the dates that we believe the construction was
15 completed.

16 There are situations in which we
17 do not know the precise date precisely because
18 of the time. I mean, most of these stations
19 were constructed 15, 20 years or more ago,
20 long before Maritime was ever around. But we
21 do have reason to believe and as well as prior
22 Commission adjudications to the effect that

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1 they were timely constructed.

2 In that, the question about
3 whether they were constructed and then they
4 were constructed, as far as I understand, is
5 no longer part of the issue that the
6 Commission is seeking to compel on.

7 As far as operations, there have
8 been some disagreements with the Bureau over
9 wording and this, that, and the other, but we
10 believe that we have provided substantially
11 all of the information we can at this time
12 regarding operation of the facilities.

13 I've got some documents here,
14 including the proposed stipulations, which
15 I've got enough copies for the people here.
16 I would like to distribute, if I may.

17 JUDGE SIPPEL: Well, if you get
18 something agreed to by the Bureau and signed
19 by both parties, then I will take a look at
20 it.

21 MR. KELLER: Well, let me do it
22 this way. First of all, I guess I will start

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1 by saying what I just said about construction.
2 I mean, we have answered the questions as to
3 construction. The Bureau maybe isn't
4 satisfied with the answers, but we have
5 answered the questions about construction.

6 With respect to the operational
7 status of the facilities, we have also
8 provided substantial information on that. And
9 basically it comes down to this. Each of the
10 facilities can be categorized into issues
11 performed.

12 This is the outline of the
13 stipulations that I am proposing. First of
14 all, Maritime has argued in the past all of
15 the stations that are subsumed within its
16 geographic licenses, these are all incumbent
17 or site-based licenses. Many of them are
18 subsumed within the geographic licenses that
19 were in the auction. And we pointed out that
20 this issue is sort of moot as to those.

21 JUDGE SIPPEL: Would you explain
22 that concept?

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1 MR. KELLER: Well, it's because
2 when you have a license, whenever the
3 Commission has a geographic auction for
4 geographic licenses, it includes a block of
5 channels over a large geographic area.

6 There may be other licensees who
7 already have what we call incumbent or
8 site-based licenses in those areas. When the
9 auction is held, the person bidding knows that
10 and bids accordingly because these may be
11 incumbent upon its licenses. If it gets the
12 license, it is obliged to protect those
13 incumbent licenses from interference. So you
14 get a license that sort of looks like a piece
15 of Swiss cheese, if you will.

16 If anything happens to those
17 licenses in the meantime, if they expire,
18 volume, or whatever, they go away, the holes
19 in your Swiss cheese go in.

20 So what we have said is as to what
21 I am calling the subsumed licenses, when
22 Maritime bid in the auction, it already had

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1 certain incumbent licenses. When it ran the
2 auction, it got the larger geographic area.

3 What I am saying is on the basic
4 qualifying issue, the one we were just talking
5 about of second Thursday, one of two things is
6 going to happen. Maritime is either
7 eventually going to prevail, either because it
8 gets second Thursday treatment or it goes
9 through a hearing and wins or whatever, in
10 which case it will only have the authority
11 that is represented by these incumbent
12 licenses.

13 It won't matter whether the
14 licenses get canceled or not because canceling
15 the licenses will subtract no authority
16 whatsoever from Maritime's geographic license.
17 If, on the other hand, Maritime is found to be
18 unqualified and all of its licenses revoked,
19 that will include its incumbent licenses.

20 So either way you slice it,
21 whatever happens under issue G -- and all we
22 have argued in the past is that because it is

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1 a moot point, we ought not be required to go
2 to unreasonable lengths to go out and verify
3 the status of the facility.

4 But, having said that, we offered
5 early on -- basically Maritime is willing to
6 cut the issues in this hearing in half. It is
7 unilaterally doing so because we are going to
8 voluntarily cancel. We are in the process of
9 voluntarily canceling those licenses. We --

10 JUDGE SIPPEL: Is there a business
11 reason for doing that?

12 MR. KELLER: Yes because it's not
13 worth spending time in a hearing litigating
14 over issues that are irrelevant or that are
15 not relevant. Maritime loses absolutely no
16 authority in doing so.

17 MR. HAVENS: They are relevant,
18 but if I am allowed, at a certain point, Your
19 Honor, I'd like to --

20 JUDGE SIPPEL: Well, I want to get
21 Mr. Keller's report.

22 MR. KELLER: So that's number one.

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1 Maritime will cancel those licenses. We put
2 this in our stipulation with the Bureau. The
3 Bureau came back with a stipulation. Their
4 counter-proposal was that Maritime would
5 stipulate these licenses automatically
6 canceled for permanent discontinuance of
7 operations or something to that effect.

8 We're not saying that. We're not
9 willing to say that. But what we are saying
10 is that we are voluntarily canceling those
11 licenses, have already submitted some
12 applications to do so in those cases. There
13 is one case where we procedurally can't submit
14 the application yet.

15 But that will cut in half -- if
16 you look at all of the list of licenses
17 involved in this hearing --

18 JUDGE SIPPEL: Isn't it 130?

19 MR. KELLER: Well, actually, the
20 way you really have to break it down is by
21 each location and each frequency block. And
22 I don't remember what the exact count is when

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1 you come down to that, but what I can tell you
2 is that if you subtract out all of the
3 subsumed licenses, the ones we're cashing in,
4 that takes away half of the cases right there.
5 Okay? That takes away half of them.

6 Of the remaining half that are
7 still at issue, these are licenses that are
8 not subsumed. These are licenses that are
9 totally outside of Maritime's geographic
10 license. So they have independent authority
11 standing alone.

12 As to those licenses, what we are
13 prepared to do is we are willing to stipulate
14 as to which of those licenses are not
15 currently operating in the sense of providing
16 service. We are prepared to stipulate that as
17 to most of these licenses, Maritime has not
18 provided AMTS service on these facilities
19 since December of 2007.

20 JUDGE SIPPEL: So how does the
21 Bureau know that those have been constructed?

22 MR. KELLER: Well, we have

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1 answered in discovery. As I said, they have
2 been discovered. Obviously at the hearing,
3 the Commission can take issue with that, but
4 we --

5 JUDGE SIPPEL: Wait a minute.
6 Wait a minute. How do you take issue with
7 something that is either constructed or it is
8 not constructed?

9 MR. KELLER: Well, we --

10 JUDGE SIPPEL: What is the issue?

11 MR. KELLER: The Commission has
12 asked, were the facilities constructed?

13 JUDGE SIPPEL: Yes.

14 MR. KELLER: We said yes, that
15 they were all timely constructed. We have
16 produced 27,000-plus pages of documents
17 showing operations of the company. We have
18 provided revenue information, this, that, and
19 the other. In some cases where we have the
20 information, we have provided the construction
21 notifications that the prior licensee
22 submitted to the Commission at the time of

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1 construction.

2 In many of these cases, there have
3 been multiple prior rulings by the Commission.
4 There have been litigations, petitions to
5 deny, the rules, many things, by Mr. Havens,
6 as a matter of fact, --

7 MR. HAVENS: I disagree.

8 MR. KELLER: -- where the
9 Commission has issued rulings --

10 MR. HAVENS: I disagree with your
11 representation that there have been
12 adjudications that these --

13 JUDGE SIPPEL: Mr. Havens, this
14 isn't the way it works. Okay? Just be quiet.

15 MR. KELLER: So all I'm saying is
16 there has been information. We have answered
17 that they are constructed. We have answered
18 to the extent that we can verify the dates
19 when they were constructed. We have stated
20 that they were all timely constructed.

21 Now, we have provided whatever
22 information we have on that in discovery. The

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1 Bureau has the burden in the proceeding of
2 proof. If the Bureau believes that our
3 information is inaccurate or whatever, I'm
4 sure we will hear about it at the hearing.
5 But the Bureau is the one that has to come
6 forward with the information and prove that
7 these stations were not constructed. But
8 that's number one.

9 Number two, we have stated in our
10 hearing that these were all timely
11 constructed. And we also stated that they
12 were operated up until some point after
13 2005-2006.

14 As of December of 2007, no AMTS
15 service was provided. We received no further
16 revenue. The company did not provide AMTS
17 service as to most of these licenses. We are
18 willing to stipulate to that.

19 We are not willing to stipulate
20 that the discontinuance of service is
21 permanent. Okay? As to some of the
22 facilities, we are also willing -- as to most

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1 of the facilities, we are also willing to
2 stipulate that service has not since resumed
3 at this point. Some of them maybe have
4 resumed or we believe they have because we
5 believe that in some cases, the company
6 resumes service by providing leases, spectrum
7 leases, pursuant to the Commission's secondary
8 market rules. But as to most of them, we are
9 willing to stipulate that the service hasn't
10 resumed. So right there the Commission --
11 we're stipulated that since 2007 -- or we will
12 stipulate that since 2007, no service has been
13 provided. But we still believe the Commission
14 has the burden of proving that that
15 discontinuance is permanent.

16 The company has taken the position
17 that it has never intended to permanently
18 discontinue service. We --

19 MS. KANE: Your Honor?

20 JUDGE SIPPEL: Let him finish.

21 MR. KELLER: We also are prepared
22 to stipulate as to -- I don't know -- maybe

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1 close to 10 to 20 or so stations that are not
2 only not providing service but are not
3 operational at a certain date for one reason
4 or another. We lost the power or utilities
5 have been canceled for nonpayment. So the
6 station can't operate.

7 So basically what I am saying is
8 in discovery, we have provided the information
9 about each facility whether we -- first of
10 all, we have unequivocally stated that
11 everything was timely constructed.

12 Number two, as to operational
13 status, we have provided the information that
14 the station is either operational or it is
15 capable, constructed, and capable of providing
16 service right now. We have provided
17 information about whether or not it is
18 providing service right now. We have provided
19 information about which stations are not
20 operational and not capable of providing
21 service. And we have provided information
22 regarding the dates of when the stations

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1 become nonoperational.

2 Now, if there is still something
3 missing, I mean, I don't know what it is.

4 JUDGE SIPPEL: Well, let me hear
5 from Ms. Kane.

6 MS. KANE: Well, let me see if I
7 can do this in somewhat of an organized
8 fashion. With regard to the construction
9 issues, we have asked for dates of
10 construction. And we asked for discovery on
11 whether there was evidence of construction.

12 We have asked Maritime to identify
13 that evidence by production number since all
14 of the evidence was numbered in their 27,000
15 pages.

16 In response, we got a chart that
17 identifies for a small portion of the licenses
18 a specific construction date and a few
19 documents that have production numbers. I
20 don't know the numbers off the top of my head,
21 but --

22 JUDGE SIPPEL: That's all right.

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